

**Baltimore Rebuilders, Inc. and United Steelworkers
of America, AFL-CIO, CLC. Case 5-CA-22915**

February 26, 1993

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH**

Upon a charge filed by the United Steelworkers of America, AFL-CIO, CLC, the Union, the General Counsel of the National Labor Relations Board issued a complaint on September 25, 1992, against Baltimore Rebuilders, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On January 28, 1993, the General Counsel filed a Motion for Summary Judgment. On January 29, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 20, 1992, notified the Respondent that unless an answer was received by December 4, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Maryland corporation, with an office and place of business in Baltimore, Maryland, has been engaged in the business of rebuilding carburetors. During the 12-month period ending May 1, 1992, a representative period, the Respondent sold and shipped from its Baltimore, Maryland facility products,

materials, goods, and supplies valued in excess of \$50,000 directly to points outside the State of Maryland. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time production employees and leadpeople employed by the Employer at its Baltimore, Maryland facility, but excluding all other employees, maintenance employees, truckdrivers, technical representatives, confidential employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

Since on or about 1987, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and since that date the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period April 6, 1991, to April 5, 1994. At all times since 1987, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about April 1, 1992, the Respondent has failed to honor the terms of its contract with the Union by failing to deduct and remit union dues for employees who had executed dues-checkoff authorizations as required by article 3 of the parties' contract. Since on or about May 1, 1992, the Respondent has failed to honor the terms of its contract with the Union by failing to continue in effect health insurance coverage as required by article 21.1 of the parties' contract. The Respondent engaged in this conduct without the Union's consent. The terms and conditions of employment affected are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By failing to honor the terms of its contract with the Union through its failure to deduct and remit union dues for employees who had executed dues-checkoff authorizations and to continue in effect health insurance coverage, the Respondent has engaged in unfair labor practices affecting commerce within the meaning

of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to deduct union dues for employees who had executed dues-checkoff authorizations and remit them to the Union, we shall order the Respondent to deduct and remit Union dues as required by the contract and to reimburse the Union for its failure to do so since April 1, 1992, with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments for health insurance, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1979), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Baltimore Rebuilders, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to honor the terms of its contract with the Union by failing to deduct and remits union dues for those employees who have executed dues-checkoff authorizations and by failing to continue in effect health insurance coverage.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Deduct and remit Union dues for those employees who have executed dues-checkoff authorizations and reimburse the Union for its failure to do so since

April 1, 1992, in the manner set forth in the remedy section of this decision.

(b) Continue in effect the terms of article 21.1 of its contract with the Union by continuing in effect health insurance coverage and make employees whole for its failure to do so as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Baltimore, Maryland, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to honor the terms of our collective-bargaining agreement with the United Steelworkers of America, AFL-CIO, CLC, by failing to deduct and remit union dues for employees who had executed dues-checkoff authorizations or by failing to continue in effect health insurance coverage.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in effect health insurance coverage as provided for in the agreement and make employees in the following unit whole for our failure to do so since May 1, 1992:

All regular full-time production employees and leadpeople employed by the Employer at its Baltimore, Maryland facility, but excluding all other employees, maintenance employees, truckdrivers, technical representatives, confidential employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL deduct and remit union dues for those employees who have executed a dues-checkoff authorization as provided for in the agreement and reimburse the Union for our failure to do so.

BALTIMORE REBUILDERS, INC.